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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,196	02/17/2004	Michael Lee Wayne	3060/1	9924

7590 03/18/2005

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EXAMINER
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HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/780,196

**Applicant(s)**

WAYNE, MICHAEL LEE

**Examiner**

Gary Hartmann

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) 10-26 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.  
7) ☒ Claim(s) 7 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakob (U.S. Patent 4,946,307) in view of Gutman et al. (U.S. Patent 3,843,274).

Jakob discloses a pavement recycling assembly including a frame (12) and a flat anvil (40) disposed at a forward end of the frame. There is a laterally extending toothed grinding drum (32) rotatably mounted in a grinding chamber and a means (28) for rotating the cylinder. There are means (60, 61) for introducing fluid asphalt into the frame and a toothed rotatable mixing wheel (50) and means for rotating the mixing wheel (not labeled). The axis of rotation of the toothed mixing wheel is generally parallel to the axis of rotation of the grinding drum (Figure 1). The mixing wheel meets the recitation of "exposed to the pavement surface" since there is an opening disposed between the wheel and the pavement. There is no screed; however, it is clear that the pavement mixture laid down is intended to be worked by a screed. Gutman et al. teach a recycling machine with a grinding drum (30) disposed in front of a screed (22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have attached the screed of Gutman et al. to the apparatus of Jakob in order to make the recycling process more efficient, as taught by Gutman et al.

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The means of introducing fluid asphalt are spray nozzles, which are disposed above an opening in the top plate of the frame (Figure 1).

Regarding claim 4, Jakob is silent regarding the configuration of the mixing wheel(s). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used two mixing wheels in order to more effectively mix the material. Note that this is simply a duplication of parts which does not patentably distinguish the apparatus in this instance.

The grinding drum is vertically adjustable.

The anvil could be longitudinally adjusted.

Jakob does not teach a heater; however, it is well known to utilize a heater in pavement recycling operations in order to soften the asphalt, as exemplified by Gutman et al. (48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a heater with Jakob for this purpose.

Jakob does not teach the control gate, as the invention is directed elsewhere; however, it is well known to use end gates with roadway material distribution systems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an end gate with Jakob in order to efficiently the amount of material desired, and not more.

#### ***Allowable Subject Matter***

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed December 22, 2004 have been fully considered but they are not persuasive. Because there are multiple structures meeting the recitation of a mixing wheel, another structure (50) has been used to meet this recitation in the amended claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

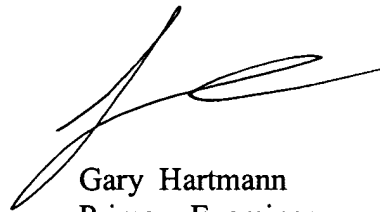
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Thursday, 9am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the printed name.

Gary Hartmann  
Primary Examiner  
Art Unit 3671

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